

#### **4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS**

**4.6 Origin: Commission**  
**Reference: Article 148**  
**Subject: Case C-33/11 A Oy, follow-up**  
**(Document taxud.c.1(2014)204931 – Working paper No 788)**

1. The VAT Committee **almost unanimously** agrees that the exemption laid down in Article 148(c) of the VAT Directive shall be applicable to the supply of a vessel to a taxable person acquiring that vessel with a view to allowing another taxable person to use it for commercial activities on the high seas but only if the acquisition is for the immediate hire of that vessel.

This exemption shall also, according to the **almost unanimous** view of the VAT Committee, be applicable to the subsequent sale of the vessel by the taxable person having acquired it provided that the exclusive use of that vessel remains for a taxable person using it for commercial activities on the high seas.

In any case, the VAT Committee **almost unanimously** agrees that this exemption shall not, under any circumstances, apply to supplies made at an earlier stage in the commercial chain than the supply made to the taxable person acquiring the vessel with a view to its immediate hire.

Further, the VAT Committee **almost unanimously** agrees that the exemption shall apply to the chartering and hiring of a vessel but only if the recipient of those services himself uses the vessel for commercial activities on the high seas and not in situations where that recipient allows other taxable persons to use it for such activities.

The VAT Committee **almost unanimously** agrees that this exemption shall also apply to the modification, repair and maintenance of the vessel and the supply, hiring, repair and maintenance of equipment incorporated or used therein provided, however, that the conditions required to apply the exemption on the acquisition, or on the chartering and hiring, are met.

2. The VAT Committee **almost unanimously** agrees that the exemption laid down in Article 148(a) of the VAT Directive, referring to the supply of goods for the fuelling and provisioning of vessels, will also apply when made in relation to a vessel belonging to a taxable person (i) who allows exclusive use of the vessel to a taxable person using it for commercial activities on the high seas, (ii) who acquired that vessel with a view to allowing that exclusive use, and (iii) whenever the acquisition is for the immediate hire of that vessel.

However, the VAT Committee **almost unanimously** agrees that the exemption shall only apply to the supply of goods made directly to the taxable person operating the vessel, and shall not cover supplies made at an earlier stage in the commercial chain.

The VAT Committee also **almost unanimously** agrees that the exemption in Article 148(a) shall not apply to supplies made to a taxable person, different from the vessel operator, who undertakes economic activities on board a vessel.

3. The VAT Committee **almost unanimously** agrees that, for the exemptions laid down in Article 148(a) and (c) of the VAT Directive to apply, the vessel must be used by the taxable person operating it, exclusively for his commercial activities. Where the use of the vessel is shared with other users who are not using it exclusively for their commercial activities, or if it is used for purposes other than the commercial activities of the taxable person, the VAT Committee is of the **almost unanimous** view that the exemption shall be denied.

Irrespective of any shared use of a vessel, the VAT Committee **almost unanimously** agrees that where goods for the fuelling and provisioning of the vessel are supplied directly to the taxable person who uses the vessel for commercial activities on the high seas, the exemption provided for in Article 148(a) of the VAT Directive shall nevertheless be applicable.

4. The VAT Committee is of the **almost unanimous** view that where a taxable person does not use a vessel exclusively for his commercial activities on the high seas, the exemption shall be denied when the owner of the vessel, or any related person, has the right to own use of the vessel, unless there is clear commercial evidence that such use is only granted on the same basis as for any other client of the taxable person.